



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYANDARUA**  
**CONSTITUTIONAL PETITION NO. E001 OF 2026**

**BETWEEN**

**JAMES NGANGA MWANGI..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NYANDARUA..... RESPONDENT**

**RULING**

1. The respondent moved the court through a Notice of preliminary objection dated the 4<sup>th</sup> day of March 2026, based on the following grounds:
  - a) The honourable court lacks jurisdiction to entertain the petition by virtue of the doctrine of exhaustion, the petitioner having failed to exhaust the available statutory remedies provided under sections 7 and 9 (2) of the Fair Administrative Action Act, 2015, and the available internal administrative review process.
  - b) The petition is premature and offends the doctrine of ripeness, the impugned decision being an interim and precautionary administrative suspension pending inspection, investigation, and administrative review, and not a final determination capable of constitutional adjudication.
  - c) The petition constitutes an abuse of the constitutional jurisdiction of this honourable court, the dispute herein being amenable to resolution through statutory administrative processes and, if necessary, judicial review proceedings under the Fair Administrative Action Act.
  - d) The petition does not disclose a justiciable constitutional violation, the Respondent having acted within its statutory mandate under sections 118, 119 and 120 of the Public Health Act (Cap. 242), sections 5, 9 and 19 of the Meat Control Act (Cap. 356), and sections 6, 120 and part XII of the County Governments Act, 2012 and in compliance with Article 47 of the Constitution and the Fair Administrative Action Act.

- e) The petition is fatally defective and constitutes an abuse of the constitutional jurisdiction of this honourable court for failure to make full and frank disclosure of material facts, the petitioner having suppressed the existence of formal security, regulatory and public health compliance concerns communicated by competent authorities which formed the basis of the impugned administrative action, thereby approaching the court with unclean hands and disentiing himself from equitable and discretionary constitutional relief.
  - f) The petition therefore offends the necessary constitutional principles set out in *Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd* and is liable to be struck out in limine.
2. The preliminary objection was objected to on the basis of the following grounds:
    - a) The petition does not offend the doctrine of exhaustion.
    - b) The matter is ripe for hearing before this court.
    - c) There is no alternative body to review the matter under the Public Health Act.
  3. A preliminary objection raises purely issues of law. The Court of Appeal in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited (1969) EA. 696** (Sir Charles Newbold P) observed as follows:

*... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse issues. This improper practice should stop.*
  4. The respondent contended that this court lacks the jurisdiction to hear the case. Jurisdiction is a legal matter. In **Salim vs Shariff Mohamed Shary [1938] KLR 9**, the Court of Appeal for Eastern Africa stated:

*If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders, however precisely certain and technically correct, are made nullities and not only voidable, they are void and may not only be set aside at any time by the court in which they are rendered but be declared void by every court in which they may be presented. It is well established that jurisdiction cannot be conferred on a court by*

***consent of parties, and any waiver on their part cannot make up for the lack or deficit of jurisdiction.***

5. The dispute arose from a letter dated February 12, 2026, sent to the petitioner by the respondent. The letter stated that the license to operate Kirinyaga Butchery was temporarily suspended due to allegations that uninspected meat had been sold to the public, in violation of the Public Health Act. The petitioner was given 14 days to respond.
6. It appears the petitioner did not reply to the allegations but instead chose to file this petition. If he had responded, he would have attached a copy or mentioned it in his affidavit.
7. The petitioner argued that this is an exceptional case, allowing the court to overlook the exhaustion doctrine. He cited the decision in **Krystalline Salt Limited v Kenya Revenue Authority [2019] eKLR**, which held that, in certain circumstances, an applicant may be permitted to bypass the exhaustion requirement. The onus is on the petitioner to prove that this is such an exceptional case, and comply with Section 9 (4) of the Fair Administrative Action Act, which states as follows:

***Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.***

8. The applicant did not seek an exemption from the obligation to comply with the internal mechanisms.
9. The impugned letter was a concern about public health. The petitioner was called upon to respond within a specified period. The decision was not final but was interim pending investigations.
10. When a matter is under investigation, courts should avoid interfering unless there is evidence that the process is unfair and could harm the person being investigated. The primary concern is the public interest, which makes courts hesitant to intervene. In this case, the petitioner has not shown that the procedure is unfair.
11. Section 9 (2) of the Fair Administrative Action Act states as follows:

***The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms, including***

*internal mechanisms for appeal or review, and all remedies available under any other written law are first exhausted.*

12. The applicant has not shown that he has exhausted all internal remedies before bringing this matter. Therefore, the petition is premature and cannot proceed in court. The preliminary objection is upheld, and the petition is dismissed. Each party will bear its own costs.

**Delivered and signed at Nyandarua, this 4<sup>th</sup> day of May 2026.**

**KIARIE WAWERU KIARIE  
JUDGE**